

**REMARKS**

The Office Action dated March 9, 2004, has been received and reviewed.

Claims 1 through 12 are currently pending and under consideration in the above-referenced application, each standing rejected.

Reconsideration of the above-referenced application is respectfully requested.

**Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claims 5 and 8 stand rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite.

M.P.E.P. § 2173.02 provides the following guidance with respect to the “definiteness” requirement of 35 U.S.C. § 112, second paragraph:

“Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. In reviewing a claim for compliance with 35 U.S.C. § 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope.”

The specification of the above-referenced application provides, “[a]s shown in FIG. 2A, layer 16 may include an electrically conductive path 17 extending substantially therethrough, such as a piece of metal or a hole . . .” Paragraph [0040].

It is respectfully submitted that, in view of this example, and in consideration of the subject matter recited in claims 5 and 8, which respectively recite, “removing at least a portion of at least one electrically conductive *defect* that extends through the dielectric layer” and “covering at least one electrically conductive *defect* that extends through the dielectric layer,” (emphasis added), one of ordinary skill would be clearly and definitely apprised of the scope of the subject matter recited in each of claims 5 and 8.

Applicant asserts that the manner in which the at least one electrically conductive defect made its way into the dielectric layer is wholly irrelevant to the scope of the claim and, therefore, could not render the claim indefinite under 35 U.S.C. § 112, second paragraph.

For these reasons, Applicant respectfully asserts that claims 5 and 8 comply with the provisions of 35 U.S.C. § 112, second paragraph, and, thus, requested that the 35 U.S.C. § 112, second paragraph, rejections of these claims be withdrawn.

### **Rejections Under 35 U.S.C. § 102**

Claims 1 through 4 and 6 through 12 stand rejected under 35 U.S.C. § 102.

Applicant asserts that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicant further asserts that the identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

### **Tjaden**

Claims 1 through 4 and 6 through 12 have been rejected under 35 U.S.C. § 102(e) for being directed to subject matter which is purportedly anticipated by the disclosure of U.S. Patent 6,190,223 to Tjaden et al. (hereinafter “Tjaden”).

Tjaden describes a field emission display with a base plate that includes a focus ring structure. The field emission display base plate is fabricated on a substrate that comprises a cathode and includes including emitter tips that protrude therefrom. The fabrication process includes deposition of a first insulating layer and deposition of a first conductive layer over the first insulating layer. The first conductive layer is masked and selectively etched to form an extraction grid of the field emission display. Thereafter, a second insulating layer is deposited over the first insulating layer and the extraction grid, and a second conductive layer, or focus ring layer, is deposited over the second insulating layer.

The extraction grid of the resulting structure is located at the same fabrication level, or elevation, as the second insulating layer.

Independent claim 1 recites a method for fabricating a field emission structure. The method of independent claim 1, as amended and presented herein, includes, among other things, forming a dielectric layer, forming another dielectric layer adjacent thereto, and forming at least a portion of an extraction grid that resides completely over the another dielectric layer.

Tjaden does not expressly or inherently describe, in detail identical to that set forth in amended independent claim 1, a method which includes as an element of the invention calling for forming at least a portion of an extraction grid that resides completely over the second insulating layer thereof. Instead, as noted previously herein, the description of Tjaden is limited to describing forming an extraction grid that is at the same fabrication level as, or coplanar with, the second insulating layer described therein.

Accordingly, Tjaden does not anticipate each and every element of amended independent claim 1, as would be required to maintain the 35 U.S.C. § 102(e) rejection thereof.

Claims 3, 4, and 6 through 12 are each allowable, among other reasons, for depending either directly or indirectly from claim 1, which is allowable.

#### Nakamoto

Claims 1, 2, 6, 7, 8, 11, and 12 are rejected under 35 U.S.C. § 102(b) for being drawn to subject matter which is assertedly anticipated by the subject matter described in U.S. Patent 5,727,976 to Nakamoto et al. (hereinafter "Nakamoto").

Nakamoto describes a method for producing a micro vacuum tube. The relevant acts of the process described in Nakamoto include the formation of an insulator layer 13 over and in contact with the protuberances of an emitter layer 14. A gate electrode layer 19, which is electrically conductive, is formed over the insulator layer 13. Thereafter, the protuberances are exposed through the gate electrode layer 19 and insulator layer 13. A removable layer 21 (*e.g.*, phosphor-silicate glass (PSG)) is then formed over gate electrode layer 19, and contacts an edge of the insulator layer 13 that is exposed around the tips of the protuberances. Next, an anode electrode layer 22 is formed over the removable layer 21. Throughholes 23 are then

formed through the anode electrode layer 22 and regions of the removable layer 21 that contact the insulator layer 13 and the tips of the protuberances are removed. *See, e.g.*, FIG. 1(j); col. 5, lines 16-21.

Nakamoto lacks any express or inherent description of a method which includes as an element of the claimed invention calling for forming at least a portion of an extraction grid (*i.e.*, gate electrode layer 19) that resides completely over the insulator layer 13 of the device disclosed therein.

Nakamoto also includes no express or inherent description of a method that includes as an element of the claimed invention calling for exposing a protuberance of the device disclosed therein through the removable layer 21 and the anode electrode layer of that device.

Therefore, it is respectfully submitted that, under 35 U.S.C. § 102(e), Nakamoto does not anticipate each and every element of amended independent claim 1 in identical detail to that provided in amended independent claim 1. Thus, under 35 U.S.C. § 102(e), amended independent claim 1 recites subject matter which is allowable over that disclosed in Nakamoto.

Claims 2, 6, 7, 8, 11 and 12 are each allowable, among other reasons, for depending either directly or indirectly from claim 1, which is allowable.

For these reasons, withdrawal of the 35 U.S.C. § 102 rejections of claims 1 through 4 and 6 through 12 is respectfully requested.

### **Obviousness-Type Double Patenting Rejection**

Claims 1 through 12 stand rejected under the judicially created doctrine of obviousness-type double patenting for reciting subject matter which is assertedly unpatentable over the subject matter to which claims 1-47 of U.S. Patent 6,197,607 is directed.

A terminal disclaimer and the appropriate fee are being filed herewith, in compliance with 37 C.F.R. § 1.321(b) and (c), to obviate the obviousness-type double patenting rejection, thereby expediting prosecution of the above-referenced application and avoiding further expense and time delay. The filing of a terminal disclaimer in the above-referenced application should not be construed as acquiescence of the obviousness-type double patenting rejection.

**Serial No. 10/615,548**

above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brick G. Power", written in a cursive style.

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Date: June 9, 2004

BGP/sls:rmh  
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